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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Steven C. Walker,

No. CV-15-00619-PHX-JZB

10 Plaintiff,

11 **ORDER**

12 v.

13 Jose Chavarria, et al.,

14 Defendants.

15 Pending before the Court is Plaintiff's Motion to Remand. (Doc. 5.) Defendant
16 Jose Chavarria improperly removed the present action and the Court lacks subject-matter
17 jurisdiction over it. Accordingly, the Court will set aside the Clerk of Court's entry of
18 default against Defendant Chavarria and remand this case back to Yuma County Justice
19 Court.¹

20 **I. Background**

21 On March 20, 2015, Plaintiff filed an action for forcible detainer against
22 Defendants Chavarria and Jasmin Rodriguez in Yuma County Justice Court, pursuant to
23 A.R.S. §§ 12-1171, *et seq.* (Doc. 1-1.) On April 6, 2015, Defendant Chavarria removed
24 the action to this Court, without the consent of Defendant Rodriguez, asserting that this
25 Court has federal question jurisdiction over Plaintiff's Complaint. (Doc. 1.) On April 16,
26 2015, Plaintiff filed a Motion to Remand this matter back to Yuma County Justice Court,

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28 ¹ Because Defendant Chavarria has not consented to Magistrate Judge jurisdiction,
this Court issues an Order on Plaintiff's pending Motion to Remand. *See* General Order
11-03.

1 arguing that the removal was improper and this Court does not have subject-matter
2 jurisdiction over this case. (Doc. 5.) Defendant Chavarria has not responded to
3 Plaintiff's Motion.

4 On May 15, 2015, District Judge Susan R. Bolton ordered Defendant to appear on
5 June 15, 2015, to show cause for his failure to comply with Rule 3.7(b) of the Local
6 Rules of Civil Procedure. (Doc. 7.) However, Defendant failed to appear for the show
7 cause hearing. (Doc. 8.) On June 16, 2015, Judge Bolton ordered Defendant Chavarria
8 to show cause in writing within seven days of the date of the Order why his answer
9 should not be stricken and default should not be entered against him for his failure to
10 comply with the Court's Order. (Doc. 9.) On June 26, 2015, after Defendant failed to
11 respond to the Court's Order, Judge Bolton directed the Clerk to strike his Answer and
12 enter default against him. (Doc. 10.) On the same day, the Clerk entered default against
13 Defendant Chavarria. (Doc. 12.) Since that time, he has not appeared or sought to set
14 aside the default entered against him.

15 **II. Discussion**

16 Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction
17 only over those matters specifically authorized by Congress or the Constitution.
18 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). As the proponent of the
19 Court's jurisdiction, the removing defendant bears the burden of establishing it. *Abrego*
20 *Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 685 (9th Cir. 2006).

21 Although Defendant Chavarria asserts in the Notice of Removal that a claim in the
22 present action arises under federal law, a review of the Complaint reveals that it is a
23 straightforward forcible detainer action, otherwise known as an eviction action. (See
24 Docs. 1, 1-1.) Further, although Defendant asserts that Plaintiff's pleading "intentionally
25 fails to allege compliance with the Civil Rights Act of 1968," and Defendant may assert a
26 federal defense if this action proceeds, the assertion of a federal defense to a state-law
27 claim does not convert the state-law claim into one "arising under" federal law for
28 purposes of federal question jurisdiction. See *Moore-Thomas v. Alaska Airlines, Inc.*,

1 553 F.3d 1241, 1244 (9th Cir. 2009) (discussing the “well-pleaded complaint rule”).
2 Therefore, the Court has no federal question jurisdiction. *See* 28 U.S.C. § 1331
3 (conferring on federal courts subject-matter jurisdiction over cases arising under federal
4 law).

5 Defendant Chavarria does not assert that this Court has diversity jurisdiction over
6 this action. And, even considering whether such jurisdiction exists here under 28 U.S.C. §
7 1332, the Court finds that the requirements for diversity jurisdiction are not satisfied. In
8 order to invoke the Court’s diversity jurisdiction, a defendant must show both that he is
9 not a citizen of the same state as Plaintiff, and that the amount in controversy exceeds
10 \$75,000. *See* 28 U.S.C. § 1332 (setting forth requirements for diversity jurisdiction). In
11 addition, even where there is diversity between the parties, a federal court may not
12 exercise jurisdiction if the moving defendant is a resident of the forum state. 28 U.S.C. §
13 1441(b). Here, the Complaint and Notice of Removal do not assert or establish diversity
14 of citizenship between the parties. (Docs. 1, 1-1.). Further, Plaintiff requests monetary
15 relief far below the \$75,000 minimum amount in controversy. (Doc. 1-1.) Finally,
16 Defendant Chavarria’s address is listed as the property at issue in this action (located in
17 Yuma, Arizona); thus, he appears to be a forum defendant who may not remove a state-
18 court action. *See id.*

19 In the absence of subject-matter jurisdiction, the Court must set aside the default
20 entered against Defendant Chavarria and remand this matter back to Yuma County
21 Justice Court. *See Watts v. Pinckney*, 752 F.2d 406, 409 (9th Cir. 1985) (a district court’s
22 judgment is void where the court lacks subject-matter jurisdiction to render the
23 judgment); *Yan v. General Pot, Inc.*, 78 F.Supp.3d 997, 1005 (C.D. Cal. 2015) (“Thus,
24 with no subject-matter jurisdiction over any of Plaintiff’s claims, the entry of default
25 against Defendants is void . . .”); 28 U.S.C. § 1447(c) (requiring district courts to remand
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1 cases if it appears, at any time before final judgment is entered, that the court lacks
2 subject-matter jurisdiction).²

3 Accordingly,

4 **IT IS ORDERED** that the Clerk of Court's entry of default against Defendant
5 Chavarria (Doc. 12) is set aside.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Remand (Doc. 5) is
7 granted.

8 **IT IS FURTHER ORDERED** that the Clerk of the Court remand this action back
9 to Yuma County Justice Court.

10 **IT IS FURTHER ORDERED** that Defendant's Motion to Proceed in District
11 Court Without Prepaying Fees or Costs (Doc. 2) is denied as moot.

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Dated this 2nd day of December, 2015.

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Honorable Stephen M. McNamee
Senior United States District Judge

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² Plaintiff also asserts that remand is appropriate because Ms. Rodriguez, the other Defendant named in the Complaint, did not consent to the removal. (Doc. 5.) However, it is not clear to the Court based on the documents submitted whether Ms. Rodriguez was properly served with the Complaint.